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Telecommunications Research & Action Center

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Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals -445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

Re: CC Docket No. 94-129
Ex Parte Submission

Dear Ms. Salas:

This letter is being submitted for the purpose of expressing the Telecommunications Research and Action Center's (TRAC) strong support for the petitions for reconsideration filed by the Rural LECs and the National Telephone Cooperative Association (NTCA) in the above-referenced proceeding, which request reinstatement of executing carrier verification (ECV) as a means of combating slamming. ECV is an effective means of eradicating slamming and leaves consumers in control of their telecommunications choices.

In its Report and Order in this proceeding, the Commission ordered executing carriers to cease verifying carrier change requests. The Commission's decision was based largely on the statements of interexchange carriers (IXCs) that the executing carriers (primarily LECs) would use ECV for anti-competitive purposes - as a means of gaining advantage for their affiliated IXC operations.¹ Yet these IXCs, who have themselves been charged with slamming, presented no concrete evidence that such anti-competitive behavior has or is likely to take place. On the other hand, the benefit to consumers of ECV is clear. Contacting consumers directly and asking whether they requested a change of carrier for a particular service will reduce slamming.

¹ As the Rural LECs noted in their petition, many of them do not have long-distance affiliates. Rural LEC petition at p.6, n.5.

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Incredibly, the Commission ordered executing carriers to stop verifying carrier change requests on the basis that it violated Section 222(b) of the Communications Act, which limits carriers' use of proprietary information. As NTCA explained in its petition, the Commission's interpretation "turns the concept of proprietary information on its head."² The Commission determined that the submitting carrier (IXC) was the customer's agent. The Commission also determined that the carrier change order is proprietary information as to the carrier, and could not be shared with the customer (via an executing carrier's request for verification). Therefore, the Commission's interpretation denies customers the right to name their own agent, and the right to learn what carrier is purporting to be their agent. This result is absurd, anti-consumer, and flies in the face of the Commission's own view of the intent of Section 222(b) - "to protect consumer choices."³

Slamming is one of the most insidious byproducts of the competitive telecommunications environment. It not only robs consumers of money, but it also robs them of control over their choice of communications provider(s). The freedom of choice and control was as much a promise of the new telecommunications age as was savings. Asking a customer whether he or she ordered a change in carrier(s) is the most logical, effective, and minimally burdensome means of fighting slamming. For that reason, TRAC believes the Commission should reinstate ECV.

In their petition, the Rural LECs point out that "[u]nder the FCC's new anti-slamming rules, the same requesting carriers that have the financial incentive to make fraudulent inducements or misstatements ... are the carriers permitted to verify carrier change requests."⁴ It would appear that the FCC decided to trust the requesting carriers that have engaged in slamming to verify customers' carrier change orders, but not trust executing carriers that have uncovered and prevented slamming to verify carrier change requests. Such a decision makes no sense and disserves consumers.

² NTCA petition at page 6.

³ Second Report and Order, rel. Dec. 23, 1998, at paragraph 108.

⁴ Rural LEC Petition at p.8.

Furthermore, the liability rules that are supposed to deter slamming and lessen the need for ECV are not in effect; whereas the prohibition on ECV went into effect in April. Just this week the Commission reported that it has handled nearly 15,000 slamming complaints so far this year.⁵ Clearly, slamming continues to be a tremendous problem, one that submitting carrier verification cannot remedy.

TRAC implores the Commission to give consumers back control over their communications choices by permitting executing carriers to contact them to verify carrier change orders. Accordingly, TRAC strongly urges the Commission to grant the Rural LEC and NTCA petitions.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Emmitt Carlton".

Emmitt Carlton
Counsel

⁵ "FCC Proposes \$1.12 Million Forfeiture Against Coleman Enterprises d/b/a/ Local Long Distance Inc., and \$1 Million Forfeiture Against Vista Group International, Inc. For Apparently Slamming Customers," Report No. CC 99-37, rel. Aug. 23, 1999.